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IN THE

Supreme Court of the United States

October 1930 Term.

No. 17

ALBERT A. HOEPER,

Appellant,

v.

TAX COMMISSION OF WISCONSIN, and MARATHON COUNTY OF WISCONSIN,

Respondents.

APPELLANT'S REPLY
To Brief of Respondent As to Jurisdiction.

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IN THE

Supreme Court of the United States

October 1930 Term.

No. 714.

ALBERT A. HOEPER, *Appellant,*

v.

TAX COMMISSION OF WISCONSIN, and MARATHON COUNTY OF WISCONSIN, *Respondents.*

APPELLANT'S REPLY

To Brief of Respondent As to Jurisdiction.

We did not attempt in our Statement of Jurisdiction to discuss the merits of the points relied on for reversal, but only the basis of the jurisdiction of the Court to hear the case. Since respondent claims the appeal is frivolous and unsubstantial, we ask the Court to receive this brief reply.

The well reasoned opinion of the able Circuit Judge that in his opinion both statutes challenged, violate the

Fourteenth Amendment (P. of R. 28-32) seems conclusive that the questions raised are substantial and should be heard by this Court on the merits.

Here a tax is imposed on appellant based upon the receipt of income of a third party over whose property, earnings or income he has no jurisdiction whatever. No more under the Wisconsin established public policy as to property and earnings of married women, than have I, or any other stranger to him and his wife. So long as appellant has no more interest or right in her property or income, than any stranger, the fact of marriage seems utterly ungermane to any taxation of that property or income. Conceded that in proper respects a classification in legislation based on marriage is valid, still it must be limited to such subject matter as is affected by the marriage relation. Property rights and earnings are expressly excluded from being at all affected by the marriage relation. Hence we claim, and ask to be heard on the claim, that to tax income or earnings of one spouse to the other, or increase the rate of one because of income of the other, is an arbitrary discrimination and based on a fact not germane at all to the income taxed.

It seems to us no reply to say, as did the Supreme Court of Wisconsin, that in most cases it is contemplated that the husband will have the benefit of the wife's income. If so, it is only as a favor, not as of right. Taxation to be valid, should be based on something more substantial than the prospect of favors. Could a child be taxed (payable out of any property he may have either in trust or guardianship) because his parents have wealth which they probably will, but are not bound to use for his benefit? We think this is injecting a novel and dan-

gerous element as a basis for tax classification. If such a Pandora's box is opened, who can foretell what will come out?

Note also that this is not a question of a difference in exemptions allowed, but instead whether the tax itself is valid. Nor is it a question of means to avoid colorable transfers (though since the *Schlesinger case, 270 U. S. 230,* that seems an insufficient basis for this tax) because admittedly in this case the property of Mrs. Hoeper was acquired before marriage, and not by gift or transfer from her husband.

We rest squarely on the doctrine of *Corliss v. Bowers, 281 U. S. 376,* that "taxation is not so much concerned with refinements of title as it is with *command over the property taxed*". (Italics ours.)

We submit that, the jurisdiction being elementary, the questions presented are substantial and call for a hearing by this Court on the merits.

Respectfully submitted,

CLAIRE B. BIRD,
Attorney for Appellant.